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HOSPITALITY HOUSE; COALITION ON  
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ATTORNEYS FOR PROPOSED  
INTERVENORS COALITION ON  
HOMELESSNESS

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

HASTINGS COLLEGE OF THE LAW, a public trust  
and institution of higher education duly organized  
under the laws and the Constitution of the State of  
California; FALLON VICTORIA, an individual;  
RENE DENIS, an individual; TENDERLOIN  
MERCHANTS AND PROPERTY ASSOCIATION, a  
business association; RANDY HUGHES, an  
individual; and KRISTEN VILLALOBOS, an  
individual,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO, a  
municipal entity,

Defendant.

**Case No. 4:20-cv-3033-JST**

**NOTICE OF MOTION AND  
MOTION FOR  
INTERVENTION; AND  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF PROPOSED  
INTERVENORS' MOTION  
FOR INTERVENTION**

Date: July 22, 2020

Time: 2:00 P.M.

Place: Courtroom 6, Second Floor

Judge: Hon. Jon S. Tigar

Complaint Filed: May 4, 2020

Trial Date: None Set

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on July 22, 2020 at 2:00 p.m, or as soon thereafter as counsel may be heard by the Honorable Jon S. Tigar, Judge of the United States District Court for the Northern District of California, 1301 Clay Street, Courtroom 6, 2<sup>nd</sup> Floor, Oakland, California 94612, Proposed Intervenor HOSPITALITY HOUSE, the COALITION ON HOMELESSNESS, and FAITHFUL FOOLS (collectively, “Intervenor”) will, and hereby do move the Court, pursuant to Rule 24 of the Federal Rules of Civil Procedure for an order granting intervention in this action.

Proposed Intervenor so move on the ground that they are entitled to mandatory intervention pursuant to Federal Rule of Civil Procedure 24(a) and permissive intervention pursuant to Federal Rule of Civil Procedure 24(b). This motion is supported by the accompanying Memorandum of Points and Authorities, *infra*; [Proposed] Complaint in Intervention for Declaratory and Injunctive Relief; the Declarations of Joe Wilson, Sarah Matthias Dennison, and Jennifer Friedenbach, Exhibits A through D, and any oral argument this Court may allow, and any other matter of which this Court takes notice.

DATED: June 8, 2020

Respectfully submitted,

PUBLIC INTEREST LAW PROJECT  
DISABILITY RIGHTS CALIFORNIA  
BAY AREA LEGAL AID

By:



LAUREN HANSEN  
Attorneys for Proposed Intervenor

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs' UC Hastings' *et al.*, lawsuit seeks the removal of unsheltered Tenderloin  
 4 residents from the sidewalks of that neighborhood, but it fails to include representation of  
 5 unsheltered persons' interests in the lawsuit's framing and requested relief. Instead the Plaintiffs  
 6 are limited to a law school located in the Tenderloin, three housed individuals who live in the  
 7 Tenderloin, an individual who owns a business in the Tenderloin, and the Tenderloin Merchants  
 8 and Property Association, a business association. Collectively, they allege economic loss,  
 9 occurrence of drug use or criminal activities near their residences and businesses, and obstruction  
 10 of Tenderloin District sidewalks as their interests underlying the lawsuit. Nowhere in the  
 11 Complaint is there mention of the rights or interests of unsheltered residents of the Tenderloin,  
 12 nor any claim which seeks to protect those rights and interests, even though the suit's primary  
 13 complaint is about the presence and property of unhoused people and their property. The  
 14 Complaint seeks only to protect the Plaintiffs' legal rights, however, the relief sought would  
 15 directly affect unsheltered Tenderloin residents. See Plaintiffs' Complaint (Pl. Compl.), ¶59  
 16 ("Defendant is legally obligated to act quickly to protect Plaintiffs' legal rights . . . as well as  
 17 their health and lives.")

18 While unsheltered Tenderloin residents—and organizations that serve and advocate on  
 19 behalf of those residents—share the goals of improving public health and safety in the  
 20 Tenderloin and of securing housing for those living on sidewalks, not all resolutions of these  
 21 issues will adequately protect unsheltered residents' interests. In the absence of safe and  
 22 appropriate shelter or housing ("housing"), these residents have a constitutional right to be free  
 23 from criminalization if they are residing outside with no available shelter options. *Martin v. City*  
 24 *of Boise*, 920 F.3d 584, 616-17 (9th Cir. 2019).

25 Nor do Plaintiffs include any claim that alternative housing for unsheltered Tenderloin  
 26 residents must be legally compliant with federal disability laws, or ensuring social distancing  
 27 during the ongoing pandemic. The disability claims in the lawsuit seek to only protect the  
 28 Plaintiffs' rights, none of whom are experiencing unsheltered homelessness during a health

1 pandemic. Likewise, the lawsuit does not seek to ensure that any resolution protects residents  
 2 who need to remain in the Tenderloin to access needed supportive services or to maintain contact  
 3 with family and friends until safe and appropriate housing is available. Without residents'  
 4 representation these important issues will not be adequately protected. Three non-profit  
 5 homeless advocacy organizations—Hospitality House, Coalition on Homelessness, and Faithful  
 6 Fools—file this motion for intervention to ensure that unsheltered Tenderloin residents have a  
 7 voice in this lawsuit and that their legal interests are fully protected.

8 This Court should grant intervention pursuant to Rule of Civil Proc. 24(a) and (b).  
 9 Proposed Intervenors are entitled to intervene as a matter of right because they meet the  
 10 requirements of the four-prong test: (1) Proposed Intervenors promptly file this motion one  
 11 month after Plaintiffs' filed their complaint, before Defendant has filed a response, and within a  
 12 week of learning that Plaintiff UC Hastings refuses to sign a pledge to protect the human rights  
 13 of homeless people in this specific litigation; (2) Plaintiffs' claims directly implicate unsheltered  
 14 people's rights and interests; (3) Any decision or settlement in this case will greatly impair  
 15 unsheltered individuals' ability to protect their interests; and (4) The existing parties do not  
 16 adequately represent the interests of unsheltered Tenderloin residents.

17 Alternately, permissive intervention is appropriate because this motion is timely, the  
 18 claims involve common issues of fact and law, and intervention will not prejudice the existing  
 19 parties or delay this litigation.

## 20 **II. PROPOSED INTERVENORS' INTEREST IN THE ACTION**

21 Proposed Intervenors Hospitality House, Coalition on Homelessness, and Faithful Fools  
 22 are integral parts of the Tenderloin and homeless community. Friedenbach Decl., ¶¶3, 6-13;  
 23 Wilson Decl., ¶¶3, 6-15; Dennison Decl. ¶¶3-4, 6.

24 Hospitality House has been a staple in the Tenderloin District since its founding in 1967,  
 25 when it was established in response to a large influx of homeless LGBT youth in the  
 26 neighborhood. Wilson Decl., ¶¶3, 6-15. Its Executive Director, Joe Wilson, was formerly  
 27 homeless and came to Hospitality House, desperately needing shelter in the early 1980s. *Id.*,  
 28 ¶¶4-5. Hospitality House serves homeless individuals in the Tenderloin through its self-help

center, shelters, employment program and other social and cultural programs. *Id.* at ¶¶6-15. It focuses on the problem of economic inequality in San Francisco and the threat that inequality poses to people’s dignity, self-determination and shared humanity, particularly for low-income and homeless individuals in the Tenderloin, Sixth Street Corridor, and Mid-market neighborhoods. *Id.* at ¶¶3, 6-15.

Coalition on Homelessness (“Coalition”) is a non-profit organization that organizes unhoused people and front-line service providers to create permanent solutions to homelessness while working to protect the human rights of those forced to remain on the streets. Friedenbach Decl., *Id.* at ¶¶3. Over 50% of the Coalition’s staff and board are currently or formerly homeless. *Id.* at ¶¶4. The Coalition owns and operates a street newspaper entitled “Street Sheet”, the longest continuously running street newspaper in the country. *Id.* at ¶¶8. Street Sheet’s content is primarily written and produced by unhoused persons and includes articles, poetry and artwork. *Id.* Unhoused vendors sell the newspaper for \$2.00 and keep the profits. *Id.*

The Coalition has been representing the interests of San Francisco’s unhoused residents for over 30 years, including during the COVID-19 pandemic. It has documented and challenged the City’s unlawful seizure of homeless people’s belongings through its Stolen Belongings Project. *Id.* at ¶¶12-13. The Coalition is also deeply concerned by the increasingly crowded nature of shelters and homeless encampments in the City during the COVID-19 pandemic and the risk of ongoing community spread of the virus among unhoused San Franciscans who do not have access to safe indoor, individual housing units where they can shelter in place. *Id.* at ¶¶29-30, 34-35.

Faithful Fools was established in 1998 by a Unitarian Universalist Minister and a Franciscan who founded a community dedicated to deep personal change in the service of deep social change. Dennison Decl., ¶¶3-4, 6. Its mission is to foster awareness and analysis of deteriorating social conditions in the United States and the world at large, seen from the level of the streets, and to facilitate individual and collective responses thereto. *Id.* at ¶4. The organization meets people where they are— whether housed or unhoused— through arts, education, advocacy, and accompaniment. *Id.* They strive to raise awareness of the needs of



1 unsheltered San Franciscans and to address racism and fundamental human rights of people  
 2 experiencing homelessness. *Id.* Its co-director, Sarah Matthias Dennison (“Sam Dennison”)  
 3 brings her personal experiences to the organization as she was formerly homeless in the  
 4 Tenderloin. *Id.* at ¶5.

5 All three organizations serve persons with disabilities and provide critical services to  
 6 homeless Tenderloin residents, including shelter, survival gear, personal protective equipment,  
 7 and assistance with handling citations they receive as a result of being homeless. Wilson Decl.,  
 8 ¶¶6-17, 20-21; Friedenbach Decl., ¶¶6-13, 29; Dennison Decl., ¶¶9-12.

### 9 **III. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND**

#### 10 **A. HOMELESSNESS IN THE TENDERLOIN NEIGHBORHOOD**

11 There are over 8,000 unhoused people in San Francisco, including 5,180 who are  
 12 unsheltered, according to the 2019 point-in-time street and shelter count. Proposed Complaint in  
 13 Intervention (Intervenors’ Compl.) at ¶77. Approximately 3,656 unhoused people live in District  
 14 6, which contains the Tenderloin Neighborhood. *Id.* at ¶78. Over the last several years, the  
 15 number of unsheltered individuals has steadily increased, due in part to the lack of emergency  
 16 shelters and permanent affordable housing available in the City’s housing market. *Id.* at ¶79-80.  
 17 Shelters and other essential services have become even scarcer since January causing the number  
 18 of tents that unhoused people have no choice but to live in to increase by 285%, according to a  
 19 city report. *Id.* at ¶80.

20 A disproportionate number of these individuals have disabilities. The City’s most recent  
 21 2019 Homeless Count and Survey found:

22 Seventy-four percent (74%) of respondents reported living with one or more  
 23 health conditions, compared to 68% in 2017. These conditions included chronic  
 24 physical illnesses, physical disabilities, chronic substance use, and severe mental  
 25 health conditions. Sixty-nine percent (69%) of respondents reported their  
 condition limited their ability to hold a job, live in stable housing, or take care of  
 themselves, compared to 53% in 2017.

26 Intervenors’ Compl. at ¶81. In contrast, Census data indicate that only 5.9% of San  
 27 Francisco residents under age 65 identify as having a disability. *Id.* at ¶82.

Unsheltered persons have resided in the Tenderloin Neighborhood, and other neighborhoods in the City, for many years. *Id.* at ¶83. These individuals struggle to meet the basic necessities of life and often experience mental illness, substance abuse issues, physical disabilities, or any combination of these impairments. *Id.* at ¶84. Many persons experiencing homelessness have close ties with other unsheltered persons as well as a sense of community in the neighborhood where they live. *Id.* at ¶85; Dennison Decl. at ¶12-13.

### **B. COVID-19 AND ITS IMPACT ON THE HOMELESS COMMUNITY**

The outbreak of novel coronavirus COVID-19 has only exacerbated the plight of unsheltered San Franciscans. The unhoused population is particularly vulnerable to the spread of and infection by the virus. Intervenor's Compl., ¶112-113. They lack safe spaces to self-isolate and adequate access to hygiene facilities and medical care. *Id.* at ¶110. These risk factors have a particularly devastating impact on people of color, who are far more likely to be homeless than white people in San Francisco. *Id.* at ¶114. The limited housing resources available to unsheltered persons are in congregate settings, where infectious diseases can spread quickly. *Id.* at ¶136. For example, nearly 100 residents tested positive for COVID at Multi-Service Center South ("MSC South") and as of April 10, 2020, there were 179 confirmed COVID cases in at least 60 Single Residency Occupancy Hotels. *Id.* at ¶111.

In response to COVID-19, the City announced an Executive Order C19-07 on March 16, 2020, which has been extended several times and requires San Francisco residents to shelter in place. *Id.* at ¶103. The Executive Orders have exempted unhoused persons, who lack housing where they can shelter in place. *Id.* During the pandemic, shelters and temporary housing have been either full or unable to take new referrals. *Id.* at ¶104; Wilson Decl. at ¶7. Currently, San Francisco is not even allowing unsheltered individuals to add their names to shelter waitlists. Intervenor's Compl. at ¶104; Wilson Decl. at ¶7.

In light of COVID-19, U.S. Centers for Disease Control and Prevention (CDC) issued interim guidance that identifies people experiencing homelessness as a particularly vulnerable group. *See* Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19): Homelessness (Apr. 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra->

[precautions/homelessness.html](https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html). The CDC also issued guidance for local and state health departments regarding encampments, writing: “if individual housing options are not available, allow people who are living unsheltered or in encampments to remain where they are. Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.” *See* Centers for Disease Control and Prevention, Coronavirus Disease 2019: Interim Guidance on People Experiencing Unsheltered Homelessness (rev. May 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html#isolation>.

Consistent with this guidance, and in response to advocacy by the Coalition on Homelessness, the City has stopped sweeping encampments and committed to not confiscating homeless people’s tents during the COVID-19 pandemic. *See* City and County of San Francisco, Homelessness and COVID-19 (May 12, 2020), <https://sf.gov/information/homelessness-and-covid-19>. As a consequence, the Tenderloin neighborhood had become even more impacted, and the City has not adequately responded to alleviate the harm to both unhoused and housed persons alike. Friedenbach Decl., ¶¶25-29, 34-35; Dennison Decl., ¶7-8.

In light of the lack of availability of hotel rooms and other housing for unhoused individuals during the pandemic, advocacy organizations, including Proposed Intervenors, have provided tents and other Personal Protective Equipment to people experiencing homelessness, so that unhoused persons have shelter from the elements and the ability to self-quarantine during the spread of COVID-19. Wilson Decl., ¶¶17, 20; Friedenbach Decl., ¶¶29, 31; Dennison Decl., ¶¶9-11. Consequentially, homelessness has become more visible in San Francisco, including in the Tenderloin. Dennison Decl., ¶7; Friedenbach Decl., ¶13. Plaintiffs cite increase in tents in the Tenderloin as a reason for this lawsuit. Pl. Compl., ¶4, 30-33.

### C. THE EXISTING PARTIES AND STATUS OF LITIGATION

Plaintiffs UC Hastings, Fallon Victoria, Rene Denis, Randy Hughes, Kristen Villalobos, and Tenderloin Merchants and Property Association filed this lawsuit on May 4, 2020. Defendant City and County of San Francisco has not filed a response and plans to do so by June

23, 2020. Joint Case Management Statement, filed May 21, 2020, p. 3. The Court docket reflects there have been no substantive hearings to date but that the parties have met in settlement conferences. See Docket Entries 22-23, 35-36, 41. The parties have a further case management conference scheduled for June 19, 2020. *Id.* at (Docket Entry 40).

Plaintiffs pled fourteen causes of action against the City, the Plaintiffs’ stated interests underlying the claims are distinct from the interests of Proposed. Plaintiff UC Hastings School of Law cites its interests as increased cleaning costs, decline in student admissions, and decline in business, and presence of neighborhood drug use which by implication places blame on unhoused persons. Pl. Compl. at ¶¶37-42. Plaintiffs Victoria, Hughes and Villalobos identify their interests as wanting not to have to walk in the streets to get around tents, as well as other objections to the presence and alleged behavior of unhoused persons, including alleged drug use. *Id.* at ¶¶43-45; ¶¶49-51. Plaintiff Denis and Plaintiff Tenderloin Merchants and Property Association list their interests as financial losses from alleged safety concerns and alleged drug use. *Id.* at ¶¶46-48.

The common thread that ties these Plaintiffs together is their complaints regarding the real subjects of this litigation, the Tenderloin’s unsheltered residents, along with their personal possessions and the tents they use for shelter. Plaintiff Villalobos describes unhoused persons as drug dealers and “filthy people” that she must walk around to enter her home. Pl. Compl. at ¶50. Often, Plaintiffs complain about homelessness without naming it explicitly, writing that the Tenderloin “faces a desperate crisis”, Pl. Compl. at ¶1, that residents live in “deplorable conditions”, Pl. Comp. at ¶3, that the neighborhood has become “blighted”, (Pl. Compl. at ¶4), and has become a “horror show”. Pl. Compl., ¶32 at 12:1-22 (picture), ¶33 at 13:4-22 (picture).

Plaintiffs fault the Defendant City and County of San Francisco (“City”) for failing to police the presence of homeless people and their property in public spaces. Pl. Compl. at ¶31 (“the San Francisco Police Department has been directed not to disturb those tents, despite the fact that they block the sidewalks and shield criminals and despite the health risks that they pose to permanent residents, business owners, pedestrians, and homeless people themselves.”). Plaintiffs further allege that the presence of homeless individuals and their property implicate

1 housed residents' access to public sidewalks and creates a nuisance for housed residents and  
 2 local businesses. Pl. Compl. at ¶¶94-103. In their prayer for relief, Plaintiffs ask generally for  
 3 injunctive/equitable relief; costs and attorneys' fees; and such other and further relief as this  
 4 Court deems just and proper. See Pl. Comp. at p. 35:21-36:3.

5 In an attempt to receive reassurance from Plaintiff UC Hastings that it would not seek or  
 6 agree to any remedy that violated the rights of or otherwise harmed unhoused people, 28  
 7 homelessness advocacy and service organizations contacted UC Hastings directly regarding this  
 8 issue. The advocacy organizations asked UC Hastings to sign a pledge to protect the human  
 9 rights of homeless individuals in this current litigation. Friedenbach Decl., at ¶¶18-19, Exhibit A.  
 10 More specifically, the pledge asked UC Hastings to promise to (1) not sign a settlement  
 11 agreement or advocate for a legal outcome that negatively impacts or criminalizes unhoused  
 12 Tenderloin residents based on their economic status, (2) respect the self determination of  
 13 unhoused Tenderloin residents in legal proceedings, (3) respect the CDC recommendations  
 14 regarding tent encampments, (4) ensure legal proceedings are in compliance with *Martin v.*  
 15 *Boise*, and (5) promise to work hard during legal proceedings to ensure that illegal property  
 16 confiscation is not the result of the lawsuit. *Id.* Proposed Intervenor were three of the  
 17 organizations seeking the pledge from UC Hastings. Friedenbach Decl., at ¶¶18, Exhibit A;  
 18 Wilson Decl. at ¶¶22-25, Dennison Decl. at ¶¶11.

19 On June 1, 2020, David Faigman, Chancellor and Dean UC Hastings, issued a response  
 20 where he refused to commit to the human rights pledge. Friedenbach Decl., at ¶¶21, Exhibit C.  
 21 Subsequent attempts to persuade Mr. Faigman to sign the pledge were unsuccessful.  
 22 Friedenbach Decl., at ¶¶22-23, Exhibit D.

#### 23 **IV. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS A MATTER** 24 **OF RIGHT**

##### 25 **A. STANDARD OF MANDATORY INTERVENTION**

26 Rule 24(a) provides that:

27 “[T]he court must permit anyone to intervene who...claims an interest relating to  
 28 the property or transaction that is the subject of the action, and is so situated that

1 disposing of the action may as a practical matter impair or impede the movant's  
 2 ability to protect its interest, unless existing parties adequately represent that  
 3 interest.”

4 Fed. R. of Civ. Proc. 24(a)(2).

5 The Ninth Circuit applies a four-part test for determining whether intervention must be  
 6 permitted as a matter of right: (1) the applicant timely moved to intervene; (2) the applicant has  
 7 a significantly protectable interest relating to the property or transaction that is the subject of the  
 8 action; (3) the applicant is situated such that the disposition of the action may impair or impede  
 9 the party's ability to protect that interest; and (4) the applicant's interest will not be adequately  
 10 represented by existing parties. *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003), *as*  
 11 *amended* (May 13, 2003). “Though the applicant bears the burden of establishing these  
 12 elements... ‘the requirements for intervention are [to be] broadly interpreted in favor of  
 13 intervention.’” *Smith v. Los Angeles Unified School District*, 830 F.3d 843, 853 (9th Cir. 2016)  
 14 (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004)). “A liberal  
 15 policy in favor of intervention serves both efficient resolution of issues and broadened access to  
 16 the courts. By allowing parties with a practical interest in the outcome of a particular case to  
 17 intervene, we often prevent or simplify future litigation involving related issues...[and] allow an  
 18 additional interested party to express its views before the court.” *United States v. City of Los*  
 19 *Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (internal quotations and citations omitted).

20 Proposed Intervenors satisfy each of these prongs and should be granted intervention.

21 **1. This Request to Intervene Is Timely.**

22 The timeliness of intervention depends on three factors: the stage of the proceedings, the  
 23 prejudice to other parties, and the reason for and length of the delay. *Idaho Farm Bureau Fed. v.*  
 24 *Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995). It is well-established that timeliness is not  
 25 measured from lapse of time since the commencement of the legal action but rather how much  
 26 time has passed since the intervenor knew or should have known her interests would not be  
 27 protected without intervention. *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San*  
 28 *Francisco*, 934 F.2d 1092, 1095 (9th Cir. 1991) (holding lower court improperly denied

1 intervention because even though motion was filed 16 years after the complaint was filed, court  
 2 must focus on the date the party knew interests wouldn't be protected); *Smith v. L.A. Unified Sch.*  
 3 *Dist.*, 830 F.3d at 854 (holding timeliness depends on the totality of the circumstances and that  
 4 the "stage of proceedings factor should be analyzed by reference to the change in circumstances,  
 5 and not the commencement of the litigation").

6 A motion made "at an early stage of the proceedings" will generally satisfy the timeliness  
 7 requirement. *See Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th  
 8 Cir. 2011) (motion to intervene was timely when it was filed less than three months after the  
 9 filing of the complaint and less than two weeks after the Defendants filed an answer); *Cf. Smith*  
 10 *v. Marsh*, 194 F.3d 1045, 1051-52 (9th Cir. 1999) (affirming denial of intervention when motion  
 11 was filed 15 months after commencement of action, the existing parties had already filed several  
 12 motions, the court heard oral arguments, discovery deadlines were set, and intervenors failed to  
 13 provide a satisfactory explanation for their delay).

14 Further, while the presence of protracted negotiations may weigh against granting  
 15 intervention, the fact that existing parties have engaged in settlement negotiations does not  
 16 automatically preclude intervention. *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d at 857. "[T]he  
 17 only 'prejudice' that is relevant under this factor is that which flows from a prospective  
 18 intervenor's failure to intervene after he knew, or reasonably should have known, that his  
 19 interests were not being adequately represented—and not from the fact that including another  
 20 party in the case might make resolution more "difficult[]." *Id.* (quoting *United States v. Oregon*,  
 21 745 F.2d 550, 552-53 (9th Cir. 1984)).

22 Here, Proposed Intervenors have acted with all reasonable haste. Proposed Intervenors  
 23 file this Motion only one month and a few days after Plaintiffs filed their complaint, and the  
 24 Defendant has yet to file its initial responsive pleading. Although the parties have appeared for  
 25 settlement conferences, they have not yet resolved the litigation, and no substantive hearings  
 26 have taken place. As such, these proceedings are in the earliest of stages of litigation.

27 Further, this Court looks at the date that proposed intervenors knew their interests would  
 28 not be adequately represented, not the date of commencement of proceedings. Here, Proposed



Intervenors, along with 25 other homeless advocacy organizations, contacted UC Hastings directly to seek clarification of UC Hastings' interests in this lawsuit and to confirm whether the interests of unsheltered Tenderloin residents would be adequately protected by Plaintiffs. Specifically, UC Hastings was asked to pledge to protect the most basic of human rights for homeless people. On June 1, 2020, UC Hastings refused to sign advocacy organizations' pledge to protect the rights of unhoused Tenderloin residents in the litigation, and Proposed Intervenors promptly filed this motion.

The parties will suffer little to no prejudice from the timing of this intervention. Proposed Intervenors' motion is therefore timely.

## **2. Proposed Intervenors Have Significant Protectable Interest in This Litigation.**

"[A] party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result for the pending litigation." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006). Rule 24(a) does not require that the protectable interest at stake in the litigation be a specific legal or equitable interest. *Id.* The question is whether the intervenor (1) "asserts an interest that is protected under some law, and (2) whether there is a 'relationship' between its legally protected interest and the plaintiff's claims." *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). "[T]he 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *City of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (internal citation omitted). An interest is sufficient "if the resolution of plaintiff's claims actually will affect the applicant." *United States v. City of L.A.*, 288 F.3d at 398-99 (quoting *Donnelly*, 159 F.3d at 410).

Proposed Intervenors are intervening to protect the interests of unhoused Tenderloin residents, a population they have worked on behalf of for over 100 years collectively. Central to the issues of this lawsuit is the demand for alternative accommodations for people who are currently forced to live on the street and in public spaces. The three non-profit organizations who move to intervene have protectable interests in this action; they have unhoused persons on their staff and boards and directly provide services to homeless individuals.



1           The Complaint is unambiguous that the lawsuit seeks to advance the interest of  
 2 Plaintiffs—a law school, a business association, a business owner, and housed individuals.  
 3 Paragraph 59 asserts: “Defendant is legally obligated to protect Plaintiffs’ rights (as articulated  
 4 in their claims below) as well as their health and safety.” Plaintiffs do not state any specific  
 5 relief they seek in their prayer for relief, the Complaint is a collection of legal claims and  
 6 assertions whose primary aim is to remove unhoused residents, their tents, and other personal  
 7 property from the Tenderloin neighborhood. Instead, they declare the presence of unhoused  
 8 people and their property creates a nuisance and state-created danger. Plaintiffs further fault the  
 9 City for failing to police homeless people and their property in public spaces. Essentially, each  
 10 of Plaintiffs’ causes of action complains of and relates to the presence of impoverished  
 11 individuals who have no choice but to live and sleep outside.

12           Proposed Intervenors assert interests that are protected by law and relate to Plaintiffs’  
 13 claims. Plaintiffs allege alleges ADA claims, but treats unhoused persons as obstructions,  
 14 without acknowledging that people who are homeless are disproportionately living with  
 15 disabilities and that they are also entitled to the ADA’s protections. Plaintiffs’ Complaint  
 16 contains no mention of protecting these rights as part of any resolution.

17           It is also settled law that homeless people have a constitutional right to be free from  
 18 criminalization if they are sleeping outside where there is no alternative and adequate shelter.  
 19 *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019) (holding that “as long as there is no  
 20 option of sleeping indoors, the government cannot criminalize indigent, homeless people for  
 21 sleeping outdoors, on public property, on the false premise they had a choice in the matter.”).  
 22 Unsheltered individuals also have a constitutionally protected property interest in their personal  
 23 belongings, even those left temporarily unattended in public spaces. *See Lavan v. City of Los*  
 24 *Angeles*, 693 F.3d 1022, 1031 (9th Cir. 2012). Nevertheless, Plaintiffs label Tenderloin residents  
 25 sleeping outside as “harm[ing] its permanent residents.” Pl. Compl. at §55:17.

26           The City currently lacks sufficient alternate housing to house all of its 5,180 unsheltered  
 27 residents and their property. As such, unhoused San Franciscans, including those in the  
 28 Tenderloin, have no choice but to live and sleep outdoors. Insofar as Plaintiffs seek to remove

1 unsheltered Tenderloin residents and their property from the Tenderloin, unsheltered Tenderloin  
 2 residents have protectable legal interest in protecting themselves and their property rights.

3 Proposed Intervenor's also have interests related to the pandemic. The CDC issued  
 4 guidance stating that "the planning and response to COVID-19 transmission among people  
 5 experiencing homelessness requires a whole community approach, which means that you are  
 6 involving partners" and that "continuing homeless services during community spread of COVID-  
 7 19 is critical..."<sup>1</sup> Intervenor's should be represented in any settlement or order that addresses the  
 8 response to providing shelter during a time of a pandemic.

### 9 **3. A Decision in This Action May Impair Intervenor's Ability to Protect Their** 10 **Interests.**

11 In the third prong to intervene as a matter of right, courts ask whether "the disposition of  
 12 this case may, as a practical matter, affect" the interest at stake. *California ex rel Lockyer*, 450  
 13 F.3d at 442. "[I]f an absentee would be substantially affected in a practical sense by the  
 14 determination made in an action, he should, as a general rule, be entitled to intervene." *Sw. Ctr.*  
 15 *for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (quoting Fed. R. Civ. P. 24,  
 16 Advisory Committee Notes). "Intervention is concerned with something more than standing to  
 17 sue. It is concerned with protecting an interest which can only be protected through intervention  
 18 in the current proceeding." *Hatton v. County Bd. of Education*, 422 F.2d 457, 461 (6th Cir.  
 19 1970)(denying intervention even though applicants had standing to sue because they failed to  
 20 show interests would not be adequately represented by defendants).

21 Plaintiffs allege that the presence of tents, encampments, and homeless individuals in the  
 22 Tenderloin constitute a "horror show" and they seek the removal of unsheltered people and their  
 23 property from the neighborhood. Pl. Compl. at ¶33. The Complaint sets no bounds on what  
 24 remedies they will pursue or are willing to accept in order to be rid of the "horror show", but it is

25  
 26 <sup>1</sup> See Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19):*  
 27 *Interim Guidance for Homeless Service Providers* (Apr. 21, 2020),  
 28 <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>;  
 Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): People Who Are At Higher Risk* (Apr. 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

1 clear that the litigation's goals is to clear the Tenderloin's streets and doorways of homeless  
2 people and their belongings. *See* Friedenbach Decl., ¶¶15, 24, Exh. C at 3.

3 Any decision or resolution of the Complaint's claims will necessarily implicate the  
4 interests of unhoused persons as a practical matter. *See e.g. Sagebrush Rebellion, Inc. v. Watt*,  
5 713 F.2d 525, 526-27 (9th Cir.1983) (finding a right to intervene when an adverse decision in the  
6 suit would impair the intervenor's interest in the preservation of birds and their habitats). Here,  
7 unsheltered Tenderloin residents are the underlying subjects of Plaintiffs' suit. Those  
8 experiencing homelessness in the Tenderloin would most directly bear the effects of an adverse  
9 decision or settlement adverse to their interests. *See* Wilson Decl., ¶¶26-28. Allowing Proposed  
10 Intervenors' to intervene will help to ensure that the rights and interests of these individuals are  
11 given adequate consideration at all stages of litigation.

12 **4. The Existing Parties Will Not Adequately Represent the Interests of Proposed**  
13 **Intervenors.**

14 Finally, the existing parties will not adequately represent the interests of unhoused  
15 persons. Whether another party can adequately represent the intervenors' interests depends on  
16 "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed  
17 intervenor's arguments; (2) whether the present party is capable and willing to make such  
18 arguments; and (3) whether a proposed intervenor would offer any necessary elements to the  
19 proceeding that other parties would neglect." *Arakaki*, 324 F.3d at 1086. "The requirement of the  
20 [r]ule is satisfied if the applicant shows that representation of his interest 'may be' inadequate;  
21 and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine*  
22 *Workers of America*, 404 U.S. 528, 538, n.10 (1972).

23 Adequate representation is presumed when the government and the applicant are on the  
24 same side. *See Arakaki*, 324 F.3d at 1086. Intervenors can show the government does not  
25 adequately represent their interests when the government has a prior history of hostility and  
26 neglect to the proposed intervenors or proposed intervenors have a discrete and particularized  
27 interest. *See e.g. Coal. of Arizona/New Mexico Counties for Stable Economic Growth v. Dept. of*  
28 *Interior*, 100 F.3d 837, 844-45 (10th Cir. 1996) (writing that the burden can be met by showing

1 collusion or “that the representative has an interest adverse to the applicant, or that the  
2 representative failed in fulfilling his duty to represent the applicant's interest”).

3 In this case, neither Plaintiffs nor Defendants adequately represent Proposed Intervenor  
4 interests.

5 **(a) The interests of present parties are vastly different than those of Proposed**  
6 **Intervenor and the unsheltered persons whom they represent and serve**

7 “The most important factor in determining the adequacy of representation is how the  
8 interest compares with the interests of existing parties.” *Arakaki*, 324 F.3d at 1086. Plaintiffs  
9 bring this lawsuit to advance their own interests, which are distinct from the Proposed  
10 Intervenor interests. Plaintiffs’ financial and other interests, are materially different than those  
11 of unhoused persons. *See* section IV.A.2, *supra*. In articulating the Plaintiffs’ individual and  
12 collective interests in the litigation, the Complaint describes unhoused people living in the  
13 Tenderloin’s public spaces as a nuisance, as an obstruction, or as a danger. Pl. Compl., ¶¶94-  
14 103. Far from seeking to advance the rights and interests of unhoused individuals, the Complaint  
15 paints unsheltered Tenderloin residents in broad brush and treats those individuals’ presence as  
16 only harmful for which it seeks redress.

17 In contrast, Proposed Intervenor has an interest in asserting homeless individuals’  
18 statutory or constitutional rights, and to ensuring that any resolution of Plaintiffs’ claims  
19 does not violate those rights. Because of Plaintiffs’ drastically different interests from Proposed  
20 Intervenor, Proposed Intervenor cannot reasonably rely on Plaintiffs to raise all arguments on  
21 their behalf.

22 Proposed Intervenor also cannot rely on the City for representation of unhoused persons’  
23 interests. First, Proposed Intervenor also has claims against the City. Specifically, they raise  
24 the failure of the City to comply with federal disability law to ensure that unhoused residents  
25 have access to all City programs, and to prevent discrimination against this population.  
26 Intervenor’s Compl., ¶¶163-180. Proposed Intervenor also request declaratory judgment that  
27 the City must not engage in seizure of unhoused persons’ property that violates their Fourth or  
28 Fourteenth Amendment Rights and that the City must not violate unhoused persons’ Eighth

Amendment rights by taking action that criminalizes their homeless status. See Intervenor’s request for relief at ¶¶ e, f.

Second, as a government entity, the City is subject to conflicting and shifting constituent pressures, which render its representation of the proposed intervenor’s particular interests inadequate. See *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1254-55 (10th Cir. 2001) (intervenor’s interests not adequately represented by a government entity that must represent broader public interest, which in turn may not be coextensive with intervenor’s particular interest); *Grutter v. Bollinger*, 188 F.3d 394, 400 (6th Cir. 1999) (allowing student group to intervene to in school affirmative action case when University was “subject to internal and external institutional pressures that may prevent it from articulating some of the defenses of the policies that the proposed intervenors intend to present”); *Am. Horse Prot. Ass’n v. Veneman*, 200 F.R.D 153, 159 (D.D.C. 2001) (finding that, while the United States Department of Agriculture and a show horse group shared “identical interests in asserting that the Operating Plan [preventing the soring of horses] is lawful,” the USDA’s obligations to “interests other than those represented by the [intervenor] render its representation of the intervenor show horse groups inadequate”).

The potential for conflicting interests on the part of the government is particularly true here, given that the lawsuit pits a law school, neighborhood association, and some constituents with disabilities in the Tenderloin against the interests of homeless individuals, many of whom also have disabilities. Further, one of the Proposed Intervenor, Coalition on Homelessness, has a history of documenting the City’s unlawful seizure of homeless people’s property through its Stolen Belongings project. Given the different interests of the City and Proposed Intervenor, it cannot be presumed that the City will make all of Proposed Intervenor’s arguments in this lawsuit.

**(b) The present parties are unable, and likely unwilling, to raise all of Proposed Intervenor’s arguments**

Even a cursory glance at the current lawsuit demonstrates that the present Plaintiffs are not raising arguments representing the interests of unhoused persons because of the negative way

they describe people experiencing homelessness. Plaintiffs refer to homeless people as “filthy” and that the neighborhood has become “blighted” with their presence. Plaintiffs tie the presence of unhoused residents to “rampant drug users” and “criminals” without any explanation or citation to actual evidence. They complain that the City does not sufficiently police the unhoused population in the Tenderloin and call for increased police activity and criminalization.

Further, Proposed Intervenors Hospitality House, Coalition on Homelessness, and Faithful Fools recently asked Plaintiff Hastings School of Law to promise to protect the interests of homeless individuals in this specific litigation by signing a pledge declaring to protect the most basic of human rights. On June 1, Chancellor and Dean of UC Hastings refused to sign such a pledge. Understandably, homeless advocates are deeply concerned that current Plaintiffs are unlikely to raise arguments on behalf of unsheltered residents. See Friedenbach Decl., ¶¶18-23.

The City is also unable to raise claims on their behalf because the claims Proposed Intervenors assert are against the government.

**(c) Proposed Intervenors offer experience, expertise, and perspective that relate to necessary elements pending before this Court**

Unlike the present parties in this case, Proposed Intervenors Hospitality House, Coalition on Homelessness, and Faithful Fools have missions that are germane to the interests of unsheltered population. The organizations also provide services and assistance to unhoused persons and engage in policy and advocacy work with unsheltered Tenderloin residents, many of whom have disabilities. Wilson Decl., ¶¶3, 6-15; Friedenbach Decl., ¶¶6-13, 17; Dennison Decl., ¶¶3-4, 6, 12. All three organizations have many years of experience working to secure safe, appropriate housing for unhoused people in the Tenderloin. Wilson Decl., ¶¶3, 6-15; Friedenbach Decl., ¶3, 11, 29; Dennison Decl., ¶3-4, 6, 12. The Executive Director at Hospitality House and Co-Director at Faithful Fools were both formerly homeless, and have first-hand experience with the devastating effects of being homeless. Wilson Decl., ¶¶4-5; Dennison Decl., ¶5. Over 50% of the staff and board at the Coalition are currently or formerly homeless. Friedenbach Decl., ¶4. Thus, Proposed Intervenors have personal knowledge about

1 necessary elements to this proceeding, in particular the ADA and Rehabilitation Act, which other  
 2 parties may neglect to raise. They offer the necessary experience, expertise, and perspective to  
 3 the proceeding that other parties lack. *See Sagebrush Rebellion, Inc.*, 713 F.2d at 528 (finding  
 4 inadequate representation when “the intervenor offers a perspective which differs materially  
 5 from that of the present parties to the litigation” and that the intervenor had expertise distinct  
 6 from that of the government).

7 For these reasons, Proposed Intervenors cannot rely on the present parties to adequately  
 8 represent their interests in this litigation and are entitled to intervene as a matter of right.

#### 9 **V. INTERVENORS SHOULD BE ALLOWED PERMISSIVE INTERVENTION**

10 Even if this Court denies intervention as a matter of right, it should grant permissive  
 11 intervention pursuant to Rule 24(b). Proposed intervenors must show that (1) independent  
 12 grounds for jurisdiction exist; (2) the motion is timely; and (3) the applicant’s claim or defense  
 13 shares a common question of law or fact with the main action. Fed. R. Civ. P. 24(b)(2); *League*  
 14 *of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1308 (9th Cir. 1997). Trial courts have  
 15 broad discretion in granting permissive intervention; they can consider numerous other factors in  
 16 making that determination. *Spangler v. Pasadena City Bd. of Education*, 552 F.2d 1326, 1329  
 17 (9th Cir. 1977) (writing that once Rule 24(b) conditions are met, the trial court can consider the  
 18 “nature and extent of the intervenors’ interests...the legal position they seek to advance...its  
 19 probable relation to the merits of the case” and other factors). Finally, the Court must also  
 20 consider whether intervention will “unduly delay or prejudice the adjudication of the original  
 21 parties’ rights.” Fed. R. Civ. P. 24(b)(3).

22 Rule 24(b)’s jurisdictional requirement prevents destroying diversity jurisdiction and “the  
 23 enlargement of federal jurisdiction in such cases only where a proposed intervenor seeks to bring  
 24 new state-law claims.” *Freedom from Religion Found, Inc. v. Geithner*, 644 F.3d 836, 843-44  
 25 (9th Cir. 2011). Here, Proposed Intervenors do not bring any new state law claims, they raise  
 26 only federal claims and the same state law claims that Plaintiffs already raised, as well as provide  
 27 a response to Plaintiffs claims, which this Court already has jurisdiction. As such, jurisdictional  
 28 requirements are met.



Further, Proposed Intervenor's claims have common questions of fact and law with Plaintiffs' Complaint, namely disability claims raised by both Intervenor and Plaintiffs and the factual circumstances regarding the presence of unsheltered Tenderloin residents. Proposed Intervenor provide crucial services to those who live on the streets and to individuals with disabilities. They can provide key factual information in light of their extensive outreach and work on the ground. These perspectives are critical to a case that seeks as broad of remedies as Plaintiffs purport to seek.

The same three timeliness factors that are weighed under Rule 24(a) apply to permissive intervention, however Rule 24(b) is less lenient than Rule 24(a) in terms of timeliness. *League of United Latin Am. Citizens*, 131 F.3d at 1308. Here, Intervenor are still timely because they filed this motion shortly after learning that Plaintiffs would not represent their interest. Thus, there is little to no prejudice and no undue delay.

The present parties may argue that this motion is untimely because they have already begun settlement negotiations. However, "the idea of 'streamlining' the litigation...should not be accomplished at the risk of marginalizing those...who have some of the strongest interests in the outcome." *United States v. City of L.A.*, 288 F.3d at 404 (rejecting existing parties' argument that intervention was untimely even when difficult and complex negotiations already took place and a consent decree already filed with the court).

Finally, equitable factors also weigh in favor of granting permissive intervention. It is inconceivable how the case could go forward without the participation of *any* unhoused person or organization to represent their interests. Proposed Intervenor have the strongest interest in the outcome of this litigation; they employ staff who are currently and formerly homeless and represent some of the most vulnerable community members. Homeless people's lives and property will be directly affected by this case's outcome. Because Proposed Intervenor assert claims that share common questions of law and fact with the claims raised in this litigation, and unhoused persons have some of the strongest interests in the outcome of this case, this Court should grant permissive intervention.

## **VI. CONCLUSION**



1 For the foregoing reasons, Proposed Intervenor Hospitality House, Coalition on  
2 Homelessness, and Faithful Fools request that this Court grant intervention pursuant to Rule  
3 24(a) and Rule 24(b).

4  
5 DATED: June 8, 2020

Respectfully submitted,

6  
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8 DISABILITY RIGHTS CALIFORNIA  
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10  
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